

S.B. CIVIL MISC. APPEAL NO.160/2007.
Labu Ram & Ors. Vs. Taj Khan & Ors.

Date of Order :: 17th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Pradeep Choudhary, for the appellant.

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BY THE COURT:

For quantification of compensation to be awarded to the parents and brothers of the vehicular accident victim Sita Ram, 23 years in age, the Tribunal has put an estimate on the income of the deceased at Rs.3,000/- per month and after deducting one-third wherefrom and with application of multiplier of 18, has assessed pecuniary loss at Rs.4,32,000/-. The Tribunal has allowed Rs.10,000/- to the parents and Rs.9,000/- to the brothers of the victim towards non-pecuniary loss and has further allowed Rs.5,000/- towards funeral expenses. In this manner, the Tribunal has assessed the loss for the claimants in the sum of Rs.4,56,000/-. Then, with reference to the finding on responsibility towards accident, the Tribunal has proceeded to deduct 40% from out of the amount of assessed loss for so-called contributory negligence of the deceased.

Learned counsel for the claimant-appellants has strenuously contended that the Tribunal has been in error in finding contributory negligence of the deceased at 40% without examining the circumstances and material available on record that establish that the deceased while riding his motorcycle received fatal injuries and met with his untimely end exclusively for the fault and negligence on the part of the car driver, non-applicant No.1. Learned counsel has further contended that the Tribunal has been in error in putting estimate on the income of the deceased only at Rs.3,000/- per month though the claimants have asserted such income at Rs.6,000/- per month and there is no rebuttal available on record.

The submissions aforesaid in the context of and with reference to the quantum of compensation are not well founded.

The deceased was an unmarried person in 23 years of age and so far his income is concerned, for want of any cogent corroborative evidence on record, the Tribunal cannot be said to have erred in not accepting the assertion of the claimants and in putting an estimate on his income at Rs.3,000/- per month. However, thereafter the Tribunal has committed substantial errors; but in favour of the claimants-appellants.

In the first place, the Tribunal has proceeded to consider entire of the two-third of the estimated income of the deceased towards loss of contribution for the claimants without considering that the deceased was an unmarried person. In case of an unmarried person, looking to the future certainties and uncertainties likelihood of his getting married whereby a larger part of his income is bound to be diverted to his own family cannot be ignored. Loss of contribution in this case could not have been taken more than one-half of the estimated income of the deceased. Rather, in the present case, such contribution was required to be taken on much lower side because father of the deceased has admitted having 50-60 bighas of land with himself and has three other sons who are claimants Nos. 3 to 5. Then, application of multiplier of 18 in this case remains absolutely unjustified where age of the parents has been shown between 54-52 years. The Tribunal has further allowed rather higher amount towards funeral expenses. Thus, the figure taken by the Tribunal at Rs.4,56,000/- towards loss for the claimants in this case is itself much in excess of a reasonable assessment.

In view of such excessive assessment made by the Tribunal, even after reduction of 40% from out of the assessed loss i.e., Rs.1,82,400/-, towards contributory negligence of the deceased, the Tribunal has proceeded to award an amount of

Rs.2,73,600/- as compensation that still stands on higher side, if not too excessive. Hence, instead working to the detriment of the claimants, such reduction of 40% has worked only to bring the award towards reasonableness.

Therefore, there appears no reason or justification for admitting this appeal for the purpose of considering the finding on contributory negligence because, as noticed above, even if no contribution of the deceased towards the accident be taken, the ultimate amount of compensation admissible for the claimants cannot stand higher than the amount awarded by the Tribunal.

Resultantly, the appeal fails on merits; and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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